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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,809	08/21/2006	Marc Theisen	10191/4082	9005
26646 7590 08/12/2009 KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004				
EXAMINER BLOUNT, ERIC				
ART UNIT		PAPER NUMBER		
2612				
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08/12/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/566,809

Applicant(s)

THEISEN, MARC

Examiner

ERIC M. BLOUNT

Art Unit

2612

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 10-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12, 14-16, 18, 29, 31 and 32 is/are allowed.
- 6) ☒ Claim(s) 11, 13, 17, 19-22 is/are rejected.
- 7) ☒ Claim(s) 10, 23-28 and 30 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

1. Claims 10-32 are currently pending in the instant invention. Claims 30-32 are new. Claim 13 has been amended.

Response to Arguments

2. Applicant's arguments, see amendment, filed on May 18, 2009, with respect to the rejections of claims 12, 14-16, 18, and 29 under 35 USC 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn.
3. Applicant's arguments with respect to claims 10, 11, 13, 17, and 19-28 have been considered but are moot in view of the new grounds of rejection necessitated by amendment.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 11, 13, 17, and 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ishizaki et al [US 6,516,278 B1] in view of Miyata et al[US 6837516 B2].

With regard to **claim 13**, Ishizaki discloses a device for activating an actuator system for protecting a pedestrian, the device being connected to an environment sensor system and a contact sensor system, the device comprising:

- An arrangement for performing a first comparison of a first signal from the contact sensor system to a threshold (column 2, lines 15-33 and column 6, lines 45-52); and
- An arrangement for changing one of the threshold and the first signal as a function of a second signal of the environment sensor system, the actuator system being activated as a function of the comparing (column 2, lines 15-33; column 6, lines 7-19; and column 6, lines 60-65).

Ishizaki does not specifically disclose an arrangement for changing a threshold as a function of time. In an analogous art, Miyata discloses a device for changing a threshold in response to passage of a predetermined amount of time (column 2, line 34 – column 3, line 17). Having each reference on hand, it would have been obvious to one possessing ordinary skill in the art to try the time dependent threshold adjustment taught by Miyata in the invention of Ishizaki in order to yield the predictable results of a vehicle safety system that makes it possible to reliably operate an actuator system in the presence of an abnormality or disconnection of sensors.

As for **claim 11**, the second signal includes a relative speed (Ishizaki, column 6, lines 7-19).

As for **claims 17 and 20**, Ishizaki discloses an arrangement for integrating the first signal comparison at least once (column 2, lines 16-23).

As for **claims 19, 21, and 22**, the first signal itself is used for comparison (Ishizaki, column 2, lines 15-33).

Allowable Subject Matter

7. Claims 12, 14-16, 18, 29, 31, and 32 are allowed.
8. Claims 10, 23-28, and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC M. BLOUNT whose telephone number is (571)272-2973. The examiner can normally be reached on Monday-Thursday 8:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Benjamin C. Lee can be reached on (571) 272-2963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric M. Blount
Primary Examiner
Art Unit 2612

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